

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GRANT LESLIE WASHAM,

Plaintiff,

v.

DR. KIRK ANDRUS, et. al.,

Defendants.

No. C 13-5821 EDL (PR)

**ORDER DISMISSING WITH
LEAVE TO AMEND**

Plaintiff, a detainee at Lake County Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief"

1 requires more than labels and conclusions, and a formulaic recitation of the elements of a
2 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
3 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
4 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
5 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
6 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
7 framework of a complaint, they must be supported by factual allegations. When there are
8 well-pleaded factual allegations, a court should assume their veracity and then determine
9 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
10 679 (2009).

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
12 elements: (1) that a right secured by the Constitution or laws of the United States was
13 violated, and (2) that the alleged deprivation was committed by a person acting under the
14 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

15 **B. Legal Claims**

16 Plaintiff states that jail officials have provided inadequate medical care.

17 Plaintiff is informed that deliberate indifference to serious medical needs violates the
18 Eighth Amendment's proscription against cruel and unusual punishment. *Estelle v.*
19 *Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992),
20 *overruled on other grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th
21 Cir. 1997) (en banc). A determination of "deliberate indifference" involves an examination
22 of two elements: the seriousness of the prisoner's medical need and the nature of the
23 defendant's response to that need. *Id.* at 1059.

24 A "serious" medical need exists if the failure to treat a prisoner's condition could
25 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.* The
26 existence of an injury that a reasonable doctor or patient would find important and worthy of
27 comment or treatment; the presence of a medical condition that significantly affects an
28

individual's daily activities; or the existence of chronic and substantial pain are examples of indications that a prisoner has a "serious" need for medical treatment. *Id.* at 1059-60.

A prison official is deliberately indifferent if he or she knows that a prisoner faces a substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," but he "must also draw the inference." *Id.* If a prison official should have been aware of the risk, but was not, then the official has not violated the Eighth Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002). "A difference of opinion between a prisoner-patient and prison medical authorities regarding treatment does not give rise to a § 1983 claim." *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981). In addition "mere delay of surgery, without more, is insufficient to state a claim of deliberate medical indifference.... [Prisoner] would have no claim for deliberate medical indifference unless the denial was harmful." *Shapely v. Nevada Bd. Of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985).¹

Plaintiff first states that he was not properly treated for severe pain and an infection that has spread throughout his body following surgery in October 2013, though he concedes he was provided antibiotics. However, plaintiff provides no other details and does not identify the actions of any specific defendant. This claim will be dismissed with leave to amend to provide more information and name the appropriate defendants.

Plaintiff next argues that he was on psychotropic medication, but a doctor

¹ It is not clear if plaintiff was a pre-trial detainee at the time of this incident. Regardless, even though pretrial detainees' claims arise under the Due Process Clause, the Eighth Amendment serves as a benchmark for evaluating those claims. See *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996) (8th Amendment guarantees provide minimum standard of care for pretrial detainees). The Ninth Circuit has determined that the appropriate standard for evaluating constitutional claims brought by pretrial detainees is the same one used to evaluate convicted prisoners' claims under the Eighth Amendment. "The requirement of conduct that amounts to 'deliberate indifference' provides an appropriate balance of the pretrial detainees' right to not be punished with the deference given to prison officials to manage the prisons." *Redman v. County of San Diego*, 942 F.2d 1435, 1443 (9th Cir. 1991) (en banc) (citation omitted).

1 discontinued it and instead provided another medication that was cheaper. Plaintiff states
2 that doctors want to treat him for schizophrenia, but he only has borderline personality anti-
3 social anxiety. While it is difficult to discern the exact nature of plaintiff's claim, it appears
4 that doctors are treating him, but he disagrees with the course of treatment which does not
5 indicate a constitutional violation. Regardless, this claim will be dismissed with leave to
6 amend to provide more information of how specific defendants were deliberately indifferent
7 to his serious medical needs.

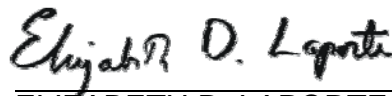
8 CONCLUSION

9 1. The complaint is **DISMISSED** with leave to amend in accordance with the
10 standards set forth above. The amended complaint must be filed within **twenty-eight (28)**
11 **days** of the date this order is filed and must include the caption and civil case number used
12 in this order and the words AMENDED COMPLAINT on the first page. Because an
13 amended complaint completely replaces the original complaint, plaintiff must include in it all
14 the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
15 1992). He may not incorporate material from the original complaint by reference. Failure to
16 amend within the designated time will result in the dismissal of this action.

17 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
18 court informed of any change of address by filing a separate paper with the clerk headed
19 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
20 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
21 Federal Rule of Civil Procedure 41(b).

22 **IT IS SO ORDERED.**

23 Dated: April 1, 2014.



ELIZABETH D. LAPORTE
United States Chief Magistrate Judge

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